For the reasons stated above, I am of the view that the first defendants' appeal against the learned assistant registrar's decision to dismiss the application to set aside the judgment entered in default ought to be dismissed with liberty to the first defendants to pursue any claim for alleged loss and damages in separate proceedings.

I now deal with the appeal to set aside the summary judgment against the second defendant. Counsel for the defendants urged this court to set aside the summary judgment against the second defendant on two grounds. The first ground is that the contract made between the plaintiffs and the second defendant is a guarantee for the payment due from the first defendants to the plaintiffs for the goods manufactured and supplied to the first defendants' customer in Taiwan. Under the Bills of Exchange Act (Cap 23, 1985 Ed), a cheque must be supported by consideration: s 27. The first defendants' cheque was post-dated and it was a part payment for goods supplied to the first defendants. When the cans of the kiwi fruit drink were delivered to the first defendants' sub-purchaser in Taiwan, they were found to be unmerchantable and unfit for the purpose. Therefore, counsel contended that the first defendants were entitled to stop payment of their post-dated cheque because there is a breach of contract by the plaintiffs and there is failure of consideration for the contract between the first defendants and the plaintiffs.

Counsel for the second defendant submitted that where a person guarantees payment of a sum due from the debtor under an entire contract and the creditor cannot sue the debtor because there has been no complete performance, the surety is also not liable: see Vol 2 *Chitty on Contracts* (26th Ed) para 5049.

The plaintiffs' claim against the second defendant is based on the contract of 17 July 1989, the terms of which have been set out above. This court finds that under the terms of the said contract, the second defendant promised that she will pay the plaintiffs the sum of $54,500 if the cheque issued by the defendants is not honoured. In consideration for this promise, the plaintiffs released the goods to the first defendants and accepted a post-dated cheque from the first defendants for the sum of $54,500 being payment for moneys due and owing to the plaintiffs for the goods. The plaintiffs duly presented the said cheque for payment but it was dishonoured on 22 August 1989. There was no rejection of the goods by the first defendants prior to the dishonour of the cheque on 22 August 1989. On the basis of these findings, I am therefore of the view that the second defendant must honour the promise she gave under the contract of 17 July 1989. Accordingly, the second defendant's appeal against the summary judgment of the learned assistant registrar is dismissed.

Accordingly, I also award the plaintiffs the costs of the first and third appeals fixed at $2,000 and $800 respectively.

Appeals dismissed.

Solicitors: *Allen & Gledhill; Ang, Netto, Rama & Wilson.*

Reported by *Yap Shao Sin*

Tan Kay Thye & Ors v Commissioner of Stamp Duties

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 61 OF 1986
CHAN SEK KEONG J
11 FEBRUARY 1991

Revenue Law — Stamp duties — Assessment — Deed of assent to beneficiary and equality payment benefit — Substantial stampable as partition, conveyance on sale, voluntary disposition or exchange — Stamp Duties Act (Cap 312, 1985 Ed), ss 6, 16, 37 & 40, arts 16, 24, 26 & 34 First Schedule

Words and Phrases — 'Co-owner' — Stamp Duties Act (Cap 312, 1985 Ed), s 2

Words and Phrases — 'Divide' — Stamp Duties Act (Cap 312, 1985 Ed), s 2

Words and Phrases — 'Exchange' — Stamp Duties Act (Cap 312, 1985 Ed), First Schedule art 24

Words and Phrases — 'Severalty' — Stamp Duties Act (Cap 312, 1985 Ed), s 2

Words and Phrases — 'Share' — Stamp Duties Act (Cap 312, 1985 Ed),

Words and Phrases — 'Substantial benefit' — Stamp Duties Act (Cap 312, 1985 Ed), s 16(3)

This was an appeal against the assessment of the Commissioner of Stamp Duties ('CSD') by way of case stated. The deceased, TCB, died intestate possessed of, among other assets, one house in Pasir Panjang which was the residence of his first wife and her seven children, and one house in St Martin's Drive which was the residence of his secondary wife and her three daughters. As the beneficiaries were desirous of retaining their respective residence, by a family arrangement entered into on 11 August 1981, it was agreed that the house at Pasir Panjang be conveyed by way of assent, to the deceased's seven children by his first wife (the appellants), as tenants in common, and the house at St Martin's Drive be conveyed by way of assent to the deceased's secondary wife (second party) solely, subject to her paying to the appellants the sum of $137,133.32 by way of equality of distribution (equality payment). This equality payment was based on the valuation of the house at Pasir Panjang and St Martin's Drive at $1.45m and $1.056m respectively as on 11 February 1980. The appellants conceded that the effective date of the agreement to distribute the residuary estate of the deceased was 11 August 1981 and not 11 February 1980.

The chief valuer valued the house at Pasir Panjang and the house at St Martin's Drive to be worth $4,167,162 and $1,357,025 respectively. The CSD acting under s 37 of the Stamp Duties Act (Cap 312, 1985 Ed) ('the Act') adjudicated and assessed the deed of assent to be stampable for $10 under art 16(g) of the First Schedule to the Act, being a conveyance of any kind not falling within the preceding para of art 16 and $19,787 on the difference between the value of the appellants' share entitlement and the value actually received amounting to $672,900 under art 26 read with art 16(a), as a conveyance operating as a voluntary disposition under s 16 of the Act. The appellants were not satisfied with the said assessment and argued that the deed of assent is an instrument of partition chargeable only to duty of $20 under art 35, and that the equality payment was just incidental to the main object of dividing the deceased's residuary estate which included the two houses, between the deceased's two families. CSD's main contention was that the deed of assent dealt with two distinct matters, viz the assent by the administrators to the appellants of firstly, their collective 133/210 shares in the house at Pasir Panjang, and secondly, the conveyance of the other family's share of 73/210 shares in the said house. The second matter has the effect of conferring on the appellants a substantial benefit of $672,900 as at 11 February 1981. Alternatively, CSD argued that the deed of assent was stampable as an exchange under art 24 whereupon duty will be based on the value of the property of greater value. CSD contended that here, the appellants had, in consideration of the conveyance by the other family of their share in the house at Pasir Panjang, conveyed the appellants' share in the house at St Martin's Drive. As the value of the other family's share in the house at Pasir Panjang was greater, stamp duty amounting to $45,437 was payable based on the sum of $1,527,000 being the value of the said share.

Held, dismissing the appeal:

(1) The deed of assent was an assent which effected a partition and as such attracted duty of $10 as an asset and $20 as an instrument of partition. The terms used in the definition of 'partition' in the Act should not be so restrictively interpreted. 'Co-owners' suggest concurrent ownership of all types of property. Whether the rights of the members of the two families be rights in property or choses in action, the members of the two families were still co-owners of the residuary estate which included the two houses. 'Divide' is not restricted to physical division of property but wide enough to cover a division by any means of interest or rights in property. 'Severalty' does not mean division to each individual sharer but includes the cessation of the original common ownership.

(2) A partition is not a conveyance on sale even with equality payment.

(3) The fact that the deed of assent effected a distribution by way of a partition and was accordingly stampable as a partition, does not exclude the operation of s 16 of the Act. Section 16 applies whenever there is a conveyance and a benefit arising as a result of inadequate consideration or other circumstances. Thus although in this case there was no valuable consideration for the partition as equality payment was not the consideration, the words 'other circumstances' are wide enough to cover the present situation where the properties were valued by the beneficiaries for the purpose of the partition and as a result of the undervaluation, the appellants obtained a substantial benefit amounting to $672,900.

(4) The deed of assent was not an exchange under art 24. Article 24 is intended to apply to an exchange of property which does not have elements of or involves a partition of property. It would be unfair to charge a partition as an exchange when the transferee of the property with the greater value has to pay duty not only on the benefit gained by him as a result of the exchange or partition but also on the property which originally belonged to him before the exchange or partition.

Cases referred to

1 *Limmer Asphalte Paving Co* v *Commissioners of Inland Revenue* (1872) LR 7 Ex 211 (folld)
2 *Re Frith & Osborne* (1876) 3 Ch D 618 (refd)
3 *Patel* v *Premabhai* [1954] AC 35 (refd)
4 *Sudeley (Lord)* v *AG* [1897] AC 11 (distd)
5 *Secretary, Board of Revenue, Madras* v *Alagappa Chettiar* AIR 1937 Madras 308 (folld)
6 *Henniker* v *Henniker* (1852) 22 LJQB 94; 118 ER 357 (folld)
7 *Christie* v *Commissioners of Inland Revenue* (1866) 36 LJ Ex 11; LR 2 Ex 46 (refd)
8 *McLeod* v *CIR* (1885) 12 R (Court of Sessions) 1045 (distd)
9 *Speyer Bros* v *Commissioners of Inland Revenue* [1908] AC 92 (refd)
10 *Lap Shun Textiles Industrial Co Ltd* v *Collector of Stamp Revenue* [1976] 1 All ER 833 (refd)
11 *Wigan Coal & Iron Co Ltd* v *Inland Revenue Commissioners* [1945] 1 All ER 392 (refd)
12 *Baker* v *Commissioners of Inland Revenue* [1924] AC 270 (refd)
13 *Doe* v *Spencer* 2 Ex 752 (refd)

Legislation referred to

Stamp Duties Act (Cap 312, 1985 Ed) ss 6, 16(1), (3), 37, 40, First Schedule arts 16(a), (g), 24, 26, 34, 35
Finance (1909-1910) Act 1910 [UK] s 74(5)
Stamp Act 1852 [UK]
Stamp Duty Act 1899 [Ind]
Stamp Duty Act 1891 [UK] s 73
Stamp Ordinance [HK]

Eric Choa (*Ignatius Hwang* with him) for the appellants.
S Sharma for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is a case stated under s 40 of the Stamp Duties Act (Cap 312, 1985 Ed)('the Act') in relation to an indenture of assent dated 25 February 1983 ('the indenture') made between the following parties: (1) TGM and CSCC as administrators of the estate of TCB, (2) CSCC, (3) CTGC, (4) STGS and (5) TK Thye, TK Tong, TK Tuan, TGG, TGH, TGM, TGK. The indenture recited as follows:

(a) TCB died in Singapore on 1 March 1964 intestate leaving surviving him his first widow, Yap Suat Tee (YST) and seven children by her viz the persons constituting the fifth party to the indenture, and his second widow, CSCC, and three daughters by her, CTGC, GTGL and STGS;
(b) letters of administration were granted to TKT, TGM and CSCC on 30 July 1969;
(c) YST died on 25 October 1967 intestate leaving surviving her seven children;

(d) GTGL died on 28 October 1969 intestate a spinster survived by her mother, CSCC, who became entitled to the whole of her estate;
(e) in the events that had happened, all the parties to the indenture became entitled to the residuary estate of TCB;
(f) all debts and testamentary expenses of the estate having been paid, the time had come for the winding up of the estate and the distribution of the residuary estate amongst those entitled thereto;
(g) during the lifetime of TCB, the principal wife, YST, and her children were residing at No 385 Pasir Panjang Road, Singapore, while his secondary wife, CSCC, and her children were residing at No 21 St Martin's Drive, Singapore;
(h) all the residuary beneficiaries were desirous that the two family houses be retained by their respective families and by way of family arrangement they have agreed amongst themselves that the family house No 385 Pasir Panjang Road be conveyed by way of assent to the seven children of YST as tenants in common in equal shares and that No 21 St Martin's Drive be conveyed by way of assent solely to their mother, CSCC, upon her paying the seven beneficiaries by way of equality of distribution the agreed sum of $137,133.32, the receipt of which they acknowledged.

The other relevant facts for the purpose of the case are: (1) the equality payment was calculated on the basis of a market value given by an independent valuer on 11 February 1980 of $1.45m for No 385 Pasir Panjang Road and of $1.056m for No 21 St Martin's Drive, the total of which was divided by the number of distributive shares and the amount thereupon adjusted to reflect the total shares of each family; (2) the agreement to distribute the two properties in the way they were done was reached by the beneficiaries on 11 August 1981; (3) it is not disputed that the effective date of the agreement to distribute the residuary estate of TCB was 11 August 1981 and not 11 February 1980 or any other date; (4) the chief valuer has given his valuation of the two properties as at 11 August 1981 as follows: $4,167,162 for No 385 Pasir Panjang Road and $1,357,025 for No 21 St Martin's Drive.

The respondent, acting under s 37 of the Act, adjudicated and assessed the indenture to (i) $10 duty under art 16(g) of the First Schedule to the Act and (ii) $19,787 ad valorem duty on $672,900 under art 26 of the First Schedule read with art 16(a). Article 16(g) prescribes duty of $10 on a conveyance of any kind not falling within paras (a) to (f). Article 26 prescribes duty in respect of any gift under s 16(1) of the Act as if it were a conveyance on sale.

The appellants were dissatisfied with the assessment of the respondent and have appealed by way of case stated. As stated, the case requires the court to determine whether the indenture is chargeable to stamp duty as assessed by the respondent, and if not, to what duty it is liable.

Appellants' case

The appellants' case is that the indenture is an instrument of partition subject to stamp duty of $20 under art 35. Counsel contends that the main object of the indenture was the agreed partition of the two residential properties between the two families, and that the court should apply the main object rule in determining its liability to stamp duty. Counsel has cited a number of authorities on this rule. As it is a well established rule, I need only refer to the statement of the rule by Martin B in *Limmer Asphalte Paving Co* v *Commissioners of Inland Revenue*[1] at pp 214-215:

> In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even though they may have believed that its effect and operation was to create a security (*sic*) mentioned in the Stamp Act, and they so declare. For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereinafter written, yet if in truth the contract set forth was not a promissory note but an agreement of another character, the stamp duty would not be that of a promissory note but of the agreement. The question therefore, stamp or no stamp, and if a stamp to what amount, is to be determined upon the real and true character and meaning of the writing. It is sufficient to refer to the case of *Rex* v *Inhabitants of Ridgewell* (1827) 6 B & C 665 to establish that proposition.

In support of his contention that the indenture was a partition, he referred to the meaning of partition as set out in 39 *Halsbury's Laws of England* (4th Ed) para 552 which states: 'The legal term 'partition' is applied to the division of land, tenements and hereditaments belonging to co-owners and the allotment among them of parts so as to put an end to community of ownership between some or all of them.' Notes 3 and 4 to that paragraph state:

> 3 Thus, if three persons are co-owners, tenants in fee simple, of Blackacre, Whiteacre and Greenacre, the transaction by which one of them becomes sole owner in fee simple of Blackacre, another of Whiteacre and the third of Greenacre is a partition.
>
> 4 Thus, in the example given in note 3, supra, a transaction by which one person becomes sole owner of Blackacre, while the other two remain co-owners of Whiteacre and Greenacre, is a good partition.

It is contended that the division of the two family houses between the two families fell within notes 3 and 4 above.

Counsel also referred to the definition of 'instrument of partition' in the Act. His submission is that the instrument was within the definition, ie it was an 'instrument whereby co-owners of any property divide or agree to divide the property in severalty'. He contends

that the definition is wide enough to apply to equitable interests in land, which was what the families had in the residuary estate after the completion of the administration of the estate of TCB.

Counsel also says that the equality payment was not the main object of or even the consideration for the division of the residuary estate but only incidental to it. He referred to *Wharton Law Lexicon* (14th Ed) at p 736 which states:

> With a view to the more convenient and perfect partition or allotment of the premises, equity frequently decreed a pecuniary compensation to one of the parties for 'owelty', ie equality of partition, so as to prevent any injustice or unavoidable inequality, as where one party has laid out large sums in improvements on the estate.

Respondent's main case

The respondent's main contention is that the indenture dealt with two distinct matters and accordingly the respondent is entitled to charge them separately by virtue of s 6 of the Act. It is submitted that the indenture related, firstly, to the assent by the administrators to the appellants of their collective 133/210 shares in No 385 Pasir Panjang Road, and secondly, to the conveyance of the other family's share of 73/210 shares in the said house, which also had the effect of conferring on the appellants a substantial benefit of $672,900 as at 11 August 1981. Counsel says that this benefit falls within s 16(1) of the Act. I shall consider this argument on substantial benefit later.

With regard to the issue of whether the indenture is an instrument of partition, counsel for the respondent argues that there was no partition as (a) the indenture did not convey the second property and (b) the appellants obtained the whole of No 385 Pasir Panjang Road. He says that it merely operated as a conveyance by way of partition. He relies on *Re Frith & Osborne.*[2] In that case at p 622, Jessel MR said:

> ...though the parties recite that they intend to make a partition, what they do is to convey an undivided moiety in consideration of the other undivided moiety in the other lands being conveyed to them. It is not a strict partition, but a conveyance by way of partition; that is how they actually carry it out.

Respondent's alternative case

The respondent's case is that the indenture was an 'exchange' under art 24 which is defined as 'any instrument whereby an exchange of any property is effected'. The proper duty payable is that as on a conveyance for a consideration equal to the value of the property with the greater value. Counsel contends that the value of the property on this basis is $1.527m being the share of the second family in the first property, the subject matter conveyed under the indenture. The stamp duty would be $45,437 and therefore higher than the claim based on s 16 of the Act.

What is a partition?

As the Act defines partition in terms of the instrument effecting it as 'any instrument whereby co-owners of any property divide the property in severalty...', the relevant question with regard to the nature of the indenture is not what a partition is at common law but as defined. However, as the expressions 'co-owners', 'divide', 'property' and 'in severalty' used in the definition are not defined, it is still necessary to resort to the common law in order to determine what these expressions mean as the court must assume that the legislature has used these terms in a common law matrix.

At common law, 'Partition was of necessity a remedy required only in cases where there was concurrent ownership, ie in cases of (1) coparceny [sic], (2) tenancy in common, (3) joint legacy, (4) tenancy by entireties. ...but before the reign of Henry VII, though all concurrent owners could agree to a partition by private agreement between themselves, coparceners alone had a legal right to demand partition. By Acts of 1539 and 1540 respectively the right to demand partition was conferred on joint tenants and tenants in common.' (per Lord Porter, delivering the judgment of the Privy Council in *Patel* v *Premabhai*[3] at p 41).

Coparcenary and tenancy by entireties ceased to exist in Singapore as from 1 August 1886. We still have joint tenancies and tenancies in common. There is no reason to restrict the meaning of the word 'property' in the definition to mean only realty or immovable property. Furthermore, the expression 'co-owners' suggests concurrent ownership of all types of property. Accordingly, the submission of counsel for the respondent that the appellants did not have vested interests in realty in respect of the two houses (on the basis of doubts entertained by Lord Herschell and Lord Shand in *Sudeley (Lord)* v *AG*[4] is not material. Whether their rights be rights in property or rights in choses in action, the members of the two families are still co-owners of the residuary estate which included the two houses.

The word 'divide' is not in the context of the statutory definition restricted to a physical division of property. It is wide enough to cover a division by any means of interests or rights in property. With respect to the expression 'in severalty', *Black's Law Dictionary* (6th Ed, 1990) has this entry: 'An estate in *severalty* is one that is held by a person in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein. 2 Bl Comm 179.' This definition is applicable only to the division

of a joint tenancy and is only one of the meanings of partition. If the expression 'in severalty' in the statutory definition has the same meaning, it may be said that the indenture did not effect a partition as, firstly, it divided property held in common tenancy, and secondly the division did not result in each beneficiary holding his share in his own right only. However, the passages from *Halsbury's Laws* which have been cited earlier suggest that nowadays the expression has a broader meaning. The statutory definition probably originated from the Indian Stamp Duty Act of 1899. In *Secretary, Board of Revenue, Madras* v *Alagappa Chettiar*,[5] a special bench of three judges held that an arbitration award directing the partition of two partnership firms between five parties, three of whom were awarded the assets in one town and the other two were awarded the assets in another town, was a partition as defined. The court said:

> Having regard to the meaning of the word 'severalty' as given in the *Concise Oxford Dictionary*, the Board thought that the division could be said to be one in 'severalty' only if the allotments had been made to each individual sharer and not when the allotments were made as between several sub-groups of sharers all of whom together originally owned the properties in common. We do not think there is any force in this distinction. The true antithesis is between the original common ownership and the subsequent cessation of that common ownership. Whether the substituted ownership is created by way of allotments to each individual amongst the original common owners or to groups of individuals is not really the point for consideration but whether the original common ownership has ceased to exist or not.

I respectfully adopt the above interpretation as is consistent with the statement in *Halsbury's Laws* (ibid).

On this basis, and having regard to the terms of the indenture, I am of the view that the indenture effected a partition. However, I do not agree that the main object of the indenture was to partition the residuary estate. The main object, as expressed in the indenture itself, was to distribute the estate. The distribution was done by means of an assent of the properties in a certain agreed manner. The payment of the equality money was to compensate for the disparity in the values of the properties and was incidental to the main object. However, for the purpose of art 34, I cannot see any distinction, which counsel for the respondent attempted to draw, between a partition under art 34 and an instrument of partition. Stamp duty is payable on instruments, not acts.

A partition is not a sale. Therefore a conveyance effecting a partition is not a 'conveyance on sale' as defined. This was decided as early as 1852 in the United Kingdom ('UK') under the Stamp Act then in force in *Henniker* v *Henniker*.[6] In *Christie* v *Commissioners of Inland Revenue*,[7] Kelly CB explained the difference as follows (at p 14):

> ... we have only to consider for a moment what a partition is to see that it is totally unlike a sale and purchase of landed estate. Persons who have some interest in property held under a tenancy in common or in any other joint manner or character, are very frequently content to take something far less in value than the interest which they possess in the common property, in order that what they are possessed of they may possess in severalty as their own, and independently of all other persons; and where persons come to such an arrangement, whether they agree at once to divide the property into equal portions, or whether one is to pay a sum of money to the other, or to all the others, again the sum which is paid is not paid as the price or purchase money of the property taken under the partition. The real consideration is the partition itself, and the liberty or power to hold the property which the party in question takes in severalty and independently of those who had theretofore been his co-partners. This is the substance of the transaction, and it is not a sale and purchase for a pecuniary consideration, which, in general, would bear some proportion to the real or supposed value of the property.

Is the indenture chargeable otherwise?

Counsel for the appellants has proceeded on the basis that if the indenture is a partition, then it is chargeable to duty of $20 under art 34 and that by operation of the main object rule it is not chargeable under any other article or provision of the Act. Counsel for the respondent however relies on s 6 of the Act (the distinct subject matters rule). I do not agree that s 6, even if it applies to the indenture, assists the respondent. His case is that there are two distinct objects, the assent and the conferment of a substantial benefit. I think it would be more accurate to say that the indenture was an assent which gave effect to a distribution of the residuary estate by way of a partition. The indenture as an assent attracts duty at $10. As an instrument of partition, the duty is $20. The conferment of a substantial benefit, in itself, is not chargeable to stamp duty. The instrument conferring it would be. But, if the indenture has that effect, it is not because that is a separate and distinct subject matter. It is chargeable to ad valorem duty simply because of the application of s 16 of the Act. To this issue, I now turn.

Is s 16 applicable?

To understand the significance of s 16 in the scheme of stamp duty legislation, it is useful to compare the legal position in the UK. At this point, I should like to examine the provisions of the UK Stamp Duty Act 1891. In the UK, a partition is chargeable to stamp duty under s 73 of the 1891 Act where equality payment is made. The section reads:

> Where upon the exchange of any real or heritable property for any other real or heritable property, or upon the partition or division of any real or heritable property, any consideration exceeding in amount or value one hundred pounds is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition or division is effected is to be charged

with the same ad valorem duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

This section was a re-enactment of a similar provision in earlier statutes. It is to be noted that, firstly, the section makes no distinction between an exchange and a partition or division of property; secondly, it applies only to real and heritable property, and thirdly, ad valorem duty is payable on the equality payment exceeding £100. In 1852, the limit of the equality money was fixed at £300. If the indenture had been executed in England, revenue would have been entitled to charge ad valorem duty based on the equality payment of $137,133.32 *assuming* that the valuation of the two family properties was correctly made at market value. However, there is no decided case in the UK on whether, in a case where the equality money is not calculated on the true market value of the partitioned property, revenue is entitled to charge duty on the basis that it is a voluntary conveyance inter vivos where a substantial benefit is conferred on one party. The UK provision corresponding to s 16 of the Act was only enacted in 1910 as s 74(5) of the Finance (1909-1910) Act 1910.

However, the majority of the textbook writers are of the view that revenue is so entitled on this broader question. In Alpe *The Law of Stamp Duties* (25th Ed) at p 256, the authors say:

> An exchange which confers a substantial benefit on one party may attract alternative higher duty as a voluntary disposition, the duty being calculated on the value of the property conveyed to him.

Monroe and Nock *The Law of Stamp Duties* (5th Ed) at para 71 at p 38 states:

> If an exchange or partition is very beneficial to one party, the Revenue could claim duty on the conveyance to that party as a voluntary disposition inter vivos.

Pinson on Revenue Law (16th Ed) at p 590, has this passage:

> *Family arrangements.* If the deceased's estate is divided up under a scheme of family arrangement, this is merely a partition and no *ad valorem* duty is chargeable on any deed or assent used to give effect to the arrangement; but if any person gets more than his share, the instrument operates *pro tanto* as a gift...and *ad valorem duty will be charged.*

Emmet on Title (18th Ed) at p 1132 says:

> If there is inequality in the value of the properties exchanged or partitioned not balanced by equality consideration, the instrument may be treated as a voluntary disposition.

These passages clearly assume that an instrument which is chargeable to duty as a partition under s 73 may be liable to duty under s 74(5) of the 1910 Act.

To the argument of counsel for the respondent that s 16 applies if its conditions are fulfilled, counsel for the appellants says that the main object rule applies and also that it is not up to the respondent to tell the parties what values they should place on the houses for the purpose of partition. He also says that the passage from *Pinson* has no application because the appellants did not get more than their *share* (meaning their aliquot share) of the property. He, however, accepts that on the chief valuer's valuation the appellants have obtained a substantial benefit from the partition. With respect to counsel's argument on the passage from *Pinson*, I need only say that the passage is not a statutory provision and this court is not asked to define the meaning of the expression 'share'. It has to be given a sensible meaning, and I would have thought that even if the expression 'share' meant an aliquot part of an estate, that part should be measured by reference to its market value where the partition of the property is not a physical partition.

In my view, the narrow approach of counsel for the appellants in limiting the issue to one of partition or no partition by reference to the main object rule is not justified by the UK case law or the principles of stamp duty law. *McLeod* v *CIR*,[8] which counsel relied on, does not support counsel's approach. The sole issue in that case was whether an instrument evidencing a partitioning of partnership assets following its dissolution was a conveyance on sale subject to ad valorem duty or a conveyance of any other kind subject to 10s duty. The court held that a partition was not a conveyance on sale. The court distinguished *Christie* v *Commissioners of Inland Revenue*,[7] where another court held that the instrument in question was a conveyance on sale. The distinction between the two cases was that in the earlier case, one party did not get any part of the partnership property whereas in the later case, one party got part of the partnership assets and an equality payment. These two decisions had nothing to do with the other established principle of stamp duty law that where an instrument falls within one or more items of charge, revenue may claim the larger duty (see *Speyer Bros* v *Commissioners of Inland Revenue*[9]). The application of this principle is not excluded by a deeming provision like s 16. The main object rule is not inconsistent with the higher duty rule nor do I think that it can exclude the operation of a statutory provision. The main object rule is merely a rule of construction to determine the nature of a document. In my view, counsel for the respondent is entitled to contend that the indenture is chargeable under s 16 and alternatively, under art 24 as an 'exchange'.

The question then is whether the requirements of s 16 were fulfilled in the case stated. The material provisions of s 16 are as follows:

(1) Any conveyance or transfer operating as a voluntary disposition inter vivos shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration of the sale.

(3) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purpose of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioner is of the opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

In *Lap Shun Textiles Industrial Co Ltd* v *Collector of Stamp Revenue*[10] (an appeal from Hong Kong on the corresponding provisions of the Hong Kong Stamp Ordinance), Lord Wilberforce, in delivering the judgment of the Privy Council, said at p 83:

It is reasonably clear what s 27 was intended to achieve. In the first place it charges voluntary conveyances, ie conveyances for which no valuable consideration is given, with ad valorem duty based on the value of the property conveyed. In the second place it prevents evasion of this duty by presenting what may in substance be a voluntary disposition as a conveyance for valuable consideration through the insertion of a nominal consideration, or an inadequate consideration. The question is whether in addition to these objectives it achieves another, namely the charging on a value basis of conveyances on sale where the consideration is inadequate.

In *Wigan Coal & Iron Co Ltd* v *Inland Revenue Commissioners*,[11] Wrottlesley J said, at p 395, in relation to the corresponding provision of the English Act:

This is an uncompromising subsection which provides that all transfers which are not, inter alia, (I leave out 'made in good faith'; I have not to deal with that) for valuable consideration are to be deemed to be transfers operating as voluntary dispositions inter vivos, and the consideration is not (this is the effect of the appendix) valuable consideration where the commissioners are of the opinion, as they are here, that the transfer confers a substantial benefit on the transferee. It is not for the commissioners to examine and see whether the transaction can be called a voluntary disposition. It is only for them to see whether there is inadequacy in the consideration or some other circumstance from which they can come to the opinion that the transfer confers a substantial benefit on the transferee. That phrase, I think, (and everybody agrees with me; I have asked them) means a benefit over and above what is paid for at the time. The statute therefore decides that if a transfer is not a disposition for valuable consideration — and valuable consideration is not consideration which is adequate in the view of the commissioners — or for other circumstances confers a substantial benefit on the transferee, it is deemed to be a transfer operating as a voluntary disposition.

The test on whether a substantial benefit has been conferred on the transferee is an objective test and that the intention of the parties is irrelevant. In the *Lap Shun Textiles* case,[10] Lord Wilberforce said at p 837:

...the plain wording of the subsection which, contrary to the argument, indicates that the tests by which the collector is to be guided are objective. When the section refers to inadequacy of consideration, and when it refers to the conveyances conferring, in the opinion of the collector, a benefit, it is clearly stating factual elements whose existence, or non-existence, appears on the face of the transaction. It cannot require the collector to investigate whether an evident inadequacy, or an evident benefit, is deliberate or intended; such a requirement, if it were to be imposed, would have to be stated in clear words. The stamp duty legislation generally proceeds by way of stamping documents according to their nature and effect, and not by references to parties' intentions, and any departure from this principle would require clear indication.

Counsel also refers to the approach of the House of Lords in *Baker* v *Commissioners of Inland Revenue*[12] in determining whether a substantial benefit has been conferred, and that is to examine the position of the appellants before and after the agreement to exchange or partition the properties. On the respondent's valuation of the two properties, which is not challenged by the appellants, the appellants' interest in the estate was 133/210 'of $4,167,000 + $1,350,000 = $3,494,100 before 11 August 1981 and after that date it was $4,167,000, thus giving rise to a substantial benefit of $672,900. In *Baker*'s case,[12] Viscount Cave LC said (at pp 275-276):

...a conveyance, although for value, comes within the section if it confers upon the grantee a substantial benefit beyond what that grantee gives, or (in other words) if it is in substance a gift to the person taking under it after allowing for any consideration which he brings in. In such cases the conveyance does confer a benefit — that is a gift — on the person to whom the conveyance is made, and to that extent is to be treated a as a voluntary disposition.

In the present case, there was no valuable consideration for the partition as the equality money was not the consideration. It was therefore not a conveyance on sale. However, s 16 applies whenever there is a benefit arising as a result of inadequate consideration or *any other circumstance*. The italicized words are wide enough to apply to the way in which the two properties were valued by the beneficiaries for the purpose of the partition. The undervaluation had resulted in the appellants obtaining a substantial benefit amounting of $672,900.

The other requirement of s 16 is that there must be a conveyance. It is not disputed that the indenture was a conveyance of No 385 Pasir Panjang Road. Section 16 applies to all conveyances operating as dispositions inter vivos. It does not matter what the main object of the parties is. The question is whether if the partition is

effected by means of a conveyance, that conveyance operates, objectively, as a disposition inter vivos. On the undisputed evidence, I have no doubt that the indenture was a voluntary disposition inter vivos.

Is the indenture an exchange?

The expression 'exchange' in art 24 is defined to mean 'any instrument whereby an exchange of any property is effected'. In the present case, the partition was effected under two separate deeds, the indenture and another conveyance in respect of No 21 St Martin's Drive which has not been produced to the court. The recitals in the indenture refer to the first family having agreed to give up their interests in the second family home to the second family in exchange for the agreement of the second family to give up their interests in the first family home and the payment by the first family to the second family of $137,133.32 as equality payment. The expressions 'partition' or 'division' with reference to the houses have not been used. What was used was the language of an exchange: our shares in No 385 Pasir Panjang Road for your shares in No 21 St Martin's Drive plus the equality payment.

Counsel for the appellants contends that the indenture was not an exchange but a partition and that there is a difference between the two. He says that an exchange takes place where two different owners, each owning separate properties, exchange their properties, with or without any payment to equalize the difference in their market values. But if, as counsel has contended, the expression 'property' includes any beneficial interests in property, why should not a share in one property exchanged for another share in another property or, as between co-owners of two properties, one owner exchanges his share in one property for the other owner's share in the other property, with or without equality payment. The definition is wide enough to include such transactions.

Neither counsel has cited any authority on the point. In the United Kingdom, transactions by way of 'exchange' and 'division or partition' are not differentiated for stamp duty purposes. At common law there is also no difference between 'exchange' and 'partition'. In *Re Frith & Osborne*,[2] at pp 625-626, Jessel MR referred to the decision in *Doe* v *Spencer*[13] and said:

> That was a question of common law, and the point arose directly whether there was any substantial difference, as was put in *Sheppard*'s Touchstone, between exchange and partition, and the court decided that, as regards tenants in common at all events...there is no ground for such an assertion.

If there is any ambiguity in the application of art 24, it arises from the side note which reads 'The same duty as a conveyance on sale for a consideration equal to the value of the property of greater value.' This note has in fact been relied on by counsel for the respondent to argue that the duty payable on the indenture would have been $45,437 based on the market value of No 385 Pasir Panjang Road at $1,450,000. However, I think that the note makes it necessary to distinguish between a true partition under art 34 and an exchange of property under art 24. It would be unfair to charge a partition as an exchange when the transferee of the property with the greater value has to pay duty not only on the benefit gained by him as a result of the exchange or partition but also on the property which originally belonged to him before the exchange or partition is effected. Furthermore, if there had been partition of a joint tenancy, it would be legally impossible to apply art 24 as there would be no exchange of one property for another since each joint tenant owned the whole of the property. Accordingly, I am of the view that art 24 is intended to apply to an exchange of property which does not have the elements of or involves a partition of the property concerned.

For the above reasons, I am of the opinion that the indenture is liable to duty as assessed by the respondent. The appellants will pay the costs of this stated case.

Appeal dismissed.

Solicitors: *Wee Swee Teow & Co.*

Reported by *Rosalind Tan*